



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

March 27, 2015

PR 15-14

Ms. Andrea M. Bicki

**Re: Bicki v. City of Woonsocket**

Dear Ms. Bicki:

Your Access to Public Records Act ("APRA") complaint filed against the City of Woonsocket ("City") is complete. By correspondence dated October 19, 2014, but received by our office on October 24, 2014, you allege that the City violated the APRA when it failed to provide you with all documents responsive to your July 18, 2014 APRA request. Specifically, you allege that documents pertaining to temporary summer employees were withheld from disclosure. In relevant part, your July 18, 2014 APRA request sought:

"2. Any and all documents pertaining to the appointment of any temporary employees, whether full-time or part-time, employed by any department within City government from the period of December 3, 2013, to present, including, but not limited to: letter of appointment; ordinance or resolution approved by the City Council; communication, in any form, from the Mayor, Personnel Director, Department Director, or any other appointing authority.

3. For each employee listed in Numbers 1 and 2 above, the name; gross salary; salary range; total cost of paid fringe benefits; gross amount received in overtime; any other remuneration in addition to salary; job title; job description; dates of employment; positions held; city or town of residence; and date of termination, if applicable."<sup>1</sup>

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<sup>1</sup> Your July 18, 2014 APRA request also contained two (2) additional categories of documents, however, only documents relevant to categories two (2) and three (3) are at issue in the present complaint.

Attorney Michael Marcello, Solicitor for the City, provided a substantive response to your complaint on November 24, 2014. In pertinent part, the City responds as follows:

“On or about July 18, 2014, the City, through its Public Records Officer, Ms. Christina Duarte, received a public records request from Ms. Bicki. It requested four separate categories of documents. For purposes of this complaint, the pertinent request is contained in request number 2, which requested ‘any and all documents pertaining to the appointment of any temporary employees from the period of December 3, 2013, to present...’ (Emphasis original).

As stated in the attached affidavit from Ms. Duarte, she interpreted the request for records from December 3, 2013 to the present as the date of the request, July 18, 2014. (Emphasis original). City records indicated that the temporary summer employees were hired as of July 22, 2014 and their first payroll check was issued by the City on August 1, 2014. When Ms. Duarte responded on July 31, 2014, via email, no checks had been issued and therefore there were no payroll records available. As stated in her affidavit, she was unaware of the hires and did not receive any records from personnel of any employee hired or paid after July 18, 2014 because she interpreted the request and made a request for records from December 3, 2013 through July 18, 2014 from the Personnel Department.”

Included with the City’s response was Ms. Christina Duarte’s affidavit. Ms. Duarte attests, in pertinent part:

“3. On or about July 18, 2014, I received a request for certain public records from Ms. Andrea Bicki, the former City Clerk of the City of Woonsocket.

4. Since the request for records sought public records related to personnel matters, I spoke to and/or forwarded the request to the Personnel Director, Mark Ferguson, for responsive records.

5. Based on the language of the request, I asked, orally, for responsive requests as of the date of inquiry July 18, 2014.

7. Since the dates of hire of the temporary highway department summer workers did not occur until July 22, 2014 and City payroll was not processed until August 1, 2014 for these individuals, records related responsive to the initial request were not sent because they occurred after the operative date of the initial request, July 18, 2014.

8. In addition, payroll records would not have been available until August 1, 2014 which occurred after I formally responded to Ms. Bicki’s request on behalf of the City on July 31, 2014.”

We acknowledge your rebuttal, which shall be discussed below.

At the outset, we note that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the City violated the APRA. See R.I. Gen. Laws § 38-2-7. In other words, we do not write on a blank slate.

In your complaint you indicate that the City's response "contained various information regarding numerous employees," however you note that records pertaining to the temporary summer employees were not provided. Under the APRA, "[e]xcept as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records..." See R.I. Gen. Laws § 38-2-3(a). The APRA further provides that "[n]othing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data." See R.I. Gen. Laws § 38-2-3(h). (Emphasis added).

Here, it is uncontested that at the time you filed your APRA request with the City, i.e., July 18, 2014, the summer employees at issue had not yet been hired. While it appears that the employees were hired on or about July 22, 2014, a few days after your request was submitted and before the City's July 31, 2014 response, your APRA request was clear in that you sought records "from the period of December 3, 2013, to present," i.e., July 18, 2015. Indeed, the plain language of your request sought documents pertaining to the "appointment of any temporary employees" from "December 3, 2013 to present," i.e. July 18, 2014, and the evidence is uncontradicted that the temporary summer employees were not appointed or hired until after the date of your request. Even later in your APRA request you further clarified that you were seeking documents related to persons "employed within the City government from the period of December 3, 2013 to [July 18, 2014]," and again it is uncontradicted that as of July 18, 2014, the employees at issue were not "employed within the City government." In addition, even if we assume that the City was in possession of relevant employment applications, as you contend, employment applications are not responsive to your request for records pertaining to "the appointment of any temporary employee" who was "employed by any department within City government from the period of December 3, 2013, to [July 18, 2014]." The plain language of your APRA request indicates the nature of the "documents pertaining to the appointment" that you sought – "letter of appointment; ordinance or resolution approved by the City Council; communications, in any form, from the Mayor, Personnel Director, Department Director, or any other appointing authority." In other words, such documents were not responsive to the plain language of your request.


Furthermore, you point out that even though your APRA request was dated July 18, 2014, the City provided you with a July 30, 2014 appointment letter. Although the letter itself was created after July 18, 2014, the evidence shows that the appointed individual was "employed within the

City government from the period of December 3, 2013 to [July 18, 2014],” i.e., July 2, 2014, unlike the temporary summer employees at issue. While, arguably, the City did not have to provide the July 30, 2014 letter in its response because the letter did not exist at the time your request was made, see R.I. Gen. Laws § 38-2-3(h), the production of this document in no way constitutes a waiver by the City of other documents that were either non-responsive to your APRA request, exempt, or not maintained at the time of your request, as you suggest. See Fuka v. R.I. Dept. of Environmental Management, C.A. 07-1050 (Disclosure of prior mailing list did not constitute a waiver of non-disclosure for subsequent mailing list.) Therefore, based on the evidence presented, we find that the City did not violate the APRA when it did not produce documents not within the City’s possession as of July 18, 2014 and/or not responsive to the plain language of your request.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

  
Malena Lopez Moya  
Special Assistant Attorney General  
Ext. 2307

Cc: Michael J. Marcello Esq.